

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 361 be amended to read as follows:

- 1 Page 2, between lines 21 and 22, begin a new paragraph and
- 2 insert: SECTION 2. IC 4-13-16.5-1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. As used in this
- 4 chapter:
- 5 "Commission" refers to the governor's commission on minority
- 6 **and women's business development enterprises** established under
- 7 section 2 of this chapter.
- 8 "Commissioner" refers to the deputy commissioner for minority
- 9 **and women's business development enterprises** of the department. ~~of~~
- 10 ~~administration.~~
- 11 "Contract" means any contract awarded by a state agency for
- 12 construction projects or the procurement of goods or services,
- 13 including professional services.
- 14 **"Department" refers to the Indiana department of**
- 15 **administration established by IC 4-13-1-2.**
- 16 "Minority business enterprise" or "minority business" means an
- 17 individual, partnership, corporation, limited liability company, or joint
- 18 venture of any kind that is owned and controlled by one (1) or more
- 19 persons who are:
- 20 (1) United States citizens; and
- 21 (2) members of a ~~racial~~ minority group.
- 22 "Owned and controlled" means having:
- 23 (1) ownership of at least fifty-one percent (51%) of the
- 24 enterprise, including corporate stock of a corporation;
- 25 (2) control over the management and active in the day-to-day
- 26 operations of the business; and
- 27 (3) an interest in the capital, assets, and profits and losses of the

1 business proportionate to the percentage of ownership.

2 ~~"Racial~~ "Minority group" means:

- 3 (1) Blacks;
- 4 (2) American Indians;
- 5 (3) Hispanics;
- 6 (4) Asian Americans; and
- 7 (5) other similar ~~racial~~ minority groups, as defined by 13 CFR
- 8 **124.103.**

9 "State agency" refers to **any of the following:**

- 10 (1) An authority, board, branch, commission, committee,
- 11 department, division, or other instrumentality of the executive,
- 12 including the administrative, department of state government.
- 13 (2) **An entity established by the general assembly as a body**
- 14 **corporate and politic.**
- 15 (3) **A state educational institution.**

16 **The term does not include the state lottery commission or the**

17 **Indiana gaming commission with respect to setting and enforcing**

18 **goals for awarding contracts to minority and women's business**

19 **enterprises.**

20 SECTION 3. IC 4-13-16.5-1.1 IS ADDED TO THE INDIANA

21 CODE AS A NEW SECTION TO READ AS FOLLOWS

22 [EFFECTIVE JULY 1, 2001]: **Sec. 1.1. A reference to a federal**

23 **statute or regulation in this chapter is a reference to the statute or**

24 **regulation as in effect January 1, 2001.**

25 SECTION 4. IC 4-13-16.5-1.3 IS ADDED TO THE INDIANA

26 CODE AS A NEW SECTION TO READ AS FOLLOWS

27 [EFFECTIVE JULY 1, 2001]: **Sec. 1.3. As used in this chapter,**

28 **"women's business enterprise" means a business that is one (1) of**

29 **the following:**

- 30 (1) **A sole proprietorship owned and controlled by a woman.**
- 31 (2) **A partnership or joint venture owned and controlled by**
- 32 **women in which:**
 - 33 (A) **at least fifty-one percent (51%) of the ownership is**
 - 34 **held by women; and**
 - 35 (B) **the management and daily business operations of**
 - 36 **which are controlled by at least one (1) of the women**
 - 37 **who owns the business.**
- 38 (3) **A corporation or other entity:**
 - 39 (A) **whose management and daily business operations**
 - 40 **are controlled by at least one (1) of the women who owns**
 - 41 **the business; and**
 - 42 (B) **that is at least fifty-one percent (51%) owned by**
 - 43 **women, or if stock is issued, at least fifty-one percent**
 - 44 **(51%) of the stock is owned by at least one (1) of the**
 - 45 **women.**

46 SECTION 5. IC 4-13-16.5-2 IS AMENDED TO READ AS

47 FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2. (a) There is**

48 **established a ~~fourteen (14) member~~ governor's commission on minority**

49 **and women's business development enterprises.** The commission

50 **shall consist of the following members:**

- 51 (1) **A governor's designee, who shall serve as chairman of the**
- 52 **commission.**

(2) The commissioner of the Indiana department of transportation.

(3) The director of the department of commerce.

(4) The commissioner of the ~~Indiana~~ department. ~~of administration.~~

(5) Six (6) individuals with demonstrated capabilities in business and industry, especially ~~racial~~ minority **and women's** business enterprises, appointed by the governor from the following geographical areas of the state:

(A) ~~Two (2)~~ **Three (3)** from the northern one-third (1/3) of the state. **Two (2) of the members appointed under this clause must represent minorities and one (1) of the members appointed under this clause must represent women.**

(B) ~~Two (2)~~ **Three (3)** from the central one-third (1/3) of the state. **Two (2) of the members appointed under this clause must represent minorities and one (1) of the members appointed under this clause must represent women.**

(C) ~~Two (2)~~ **Three (3)** from the southern one-third (1/3) of the state. **Two (2) of the members appointed under this clause must represent minorities and one (1) of the members appointed under this clause must represent women.**

(6) Two (2) members of the house of representatives, no more than one (1) from the same political party, appointed by the speaker of the house of representatives to serve in a nonvoting advisory capacity.

(7) Two (2) members of the senate, no more than one (1) from the same political party, appointed by the president pro tempore of the senate to serve in a nonvoting advisory capacity.

~~No~~ **Not** more than ~~four (4) of the seven (7)~~ **six (6)** members appointed or designated by the governor may be of the same political party. Appointed members of the commission shall serve four (4) year terms. A vacancy occurs if a legislative member leaves office for any reason. Any vacancy on the commission shall be filled in the same manner as the original appointment.

(b) Each member of the commission who is not a state employee is entitled to the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided under IC 4-13-1-4 and in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each legislative member of the commission is entitled to receive the same per diem, mileage, and travel allowances established by the legislative council and paid to members of the general assembly serving on interim study committees. The allowances specified in this

subsection shall be paid by the legislative services agency from the amounts appropriated for that purpose.

(d) A member of the commission who is a state employee but who is not a member of the general assembly is not entitled to any of the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.

(3) Other expenses actually incurred in connection with the member's duties.

(e) The commission shall meet at least four (4) times each year and at other times as the chairman deems necessary.

(f) The duties of the commission shall include but not be limited to the following:

(1) Identify minority ~~businesses and women's business enterprises~~ in the state.

(2) Assess the needs of minority ~~businesses and women's business enterprises~~.

(3) Initiate aggressive programs to assist minority ~~businesses and women's business enterprises~~ in obtaining state contracts.

(4) Give special publicity to procurement, bidding, and qualifying procedures.

(5) Include minority ~~businesses and women's business enterprises~~ on solicitation mailing lists.

(6) Define the duties, goals, and objectives of the deputy commissioner of the department of ~~administration~~ as created under this chapter to assure compliance by all state agencies with state and federal legislation and policy concerning the awarding of contracts to minority ~~businesses and women's business enterprises~~.

(7) Establish as a goal that at least five percent (5%) of state contracts be let to racial minority businesses: annual goals:

(A) for the utilization of minority and women's business enterprises; and

(B) derived from a statistical analysis of utilization study of state contracts that are required to be updated every five (5) years.

(8) Prepare a review of the commission and the various affected departments of government to be submitted to the governor and the legislative council on March 1 and October 1 of each year, evaluating progress made in the areas defined in this subsection.

(g) The department shall develop size standards based on 13 CFR 121.

(h) The department shall adopt rules of ethics under IC 4-22-2 for commission members other than commission members appointed under subsection (a)(6) or (a)(7).

~~(g)~~ (i) The department of ~~administration~~ shall furnish administrative support and staff as is necessary for the effective operation of the commission.

SECTION 6. IC 4-13-16.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) There is created in the ~~Indiana department of administration~~ a deputy commissioner for minority **and women's** business **enterprise** development. Upon consultation with the commission, the commissioner of the ~~Indiana department of administration~~ with the approval of the governor shall appoint an individual who possesses demonstrated capability in business or industry, especially in ~~racial~~ minority **or women's** business **enterprises**, to serve as deputy commissioner to work with the commission in the implementation of this chapter.

(b) The **deputy** commissioner shall do the following:

- (1) Identify and certify minority **and women's** business enterprises for state projects.
- (2) Establish a central certification file.
- (3) Periodically update the certification status of each minority **or women's** business enterprise.
- (4) Monitor the progress in achieving the ~~goal~~ **goals** established under section 2(f)(7) of this chapter.
- (5) Require state agencies to report on planned and actual participation of minority **and women's** business enterprises in contracts awarded by state agencies. The commissioner may exclude from the reports uncertified minority **and women's** business enterprises.
- (6) Determine and define opportunities for minority **and women's** business participation in contracts awarded by state agencies.
- (7) Implement programs initiated by the commission under section 2 of this chapter.
- (8) Perform other duties as defined by the commission or by the commissioner of the ~~Indiana department of administration~~.

SECTION 7. IC 4-13-16.5-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) **Before January 1 of even-numbered years, the department shall determine whether, during the most recently completed two (2) year period ending the previous July 1, the following have occurred:**

- (1) **The goals set under section 2(f)(7) of this chapter have been met.**
- (2) **If rules have been adopted under subsection (b), the requirements of the rules have been met.**

(b) **If the department determines that the goals set under section 2(f)(7) of this chapter have not been met, the department shall adopt rules under IC 4-22-2 to require the following:**

- (1) **That not fewer than twelve percent (12%) of contracts awarded by the state be awarded to minority business enterprises.**
- (2) **That not fewer than seven percent (7%) of contracts awarded by the state be awarded to women's business enterprises.**

The rules adopted by the department must provide that if a

business qualifies as both a minority business enterprise and a women's business enterprise, a contract awarded to the business is considered awarded to a minority business enterprise.

SECTION 8. IC 4-13.5-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) The commission may employ architects, engineers, space planners, construction managers, and other professional persons it considers necessary to prepare complete plans and specifications necessary for bidding for construction. The commission shall consider economy of operation to the extent practicable in preparing and approving plans and specifications.

(b) The plans and specifications shall be presented for approval to:

(1) the department;

(2) if the facility is designed to house the supreme court or court of appeals, the administrator of the supreme court for approval by the courts; and

(3) if the facility is a correctional facility, the department of correction.

(c) After the plans and specifications have been approved by the commission under subsection (b), the commission shall advertise for and receive construction bids and award contracts to the best bidders in the same manner as required by law for the department.

(d) With regard to participation by minority and women's business enterprises (as defined in IC 4-13-16.5-1 and IC 4-13-16.5-1.3), the commission shall act in the same manner as required by law for the department.

Page 2, line 22, strike "SECTION 2." and insert "SECTION 3."

Page 2, after line 23, begin a new paragraph and insert: SECTION

10. IC 4-30-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. In construing this article it is the intent of the general assembly that the following policies be carried out:

(1) That the lottery games be operated by the state lottery commission, which is created by IC 4-30-3 as a separate body politic and corporate from state government and should function as much as possible as an entrepreneurial business enterprise.

(2) That the general assembly recognizes that the operation of a lottery is a unique activity for state government and that policies and procedures appropriate for the performance of other governmental functions are not necessarily appropriate for the operation of a lottery.

(3) That the lottery games be operated as a self-supporting revenue raising operation.

(4) That the commission be accountable to the general assembly and the people of Indiana through a system of audits and reports and by complying with financial disclosure, open meetings, and public record laws.

(5) That the commission ensure the equitable participation of ~~racial~~ minorities and women in all phases of the lottery, including instant game and on-line retailers and vendors. **The commission shall establish annual goals:**

(A) for the utilization of minority and women's business enterprises (as defined in IC 4-13-16.5-1 and IC 4-13-16.5-1.3) in construction, professional services, other services, and supplies; and

(B) derived from a statistical analysis of utilization study of lottery contracts that are required to be updated every five (5) years.

The commission shall, in cooperation with the Indiana department of administration, adopt rules under IC 4-22-2 to ensure that the goals set under this subdivision are met.

(6) That lottery game advertising and promotion shall be consistent with the dignity and integrity of the state.

SECTION 9. IC 4-33-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. As used in this chapter, "minority" means a person who is one (1) of the following:

(1) Black;

(2) Hispanic;

(3) Asian American;

(4) Native American or Alaskan native;

member of a minority group as defined in IC 4-13-16.5-1.

SECTION 10. IC 4-33-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. As used in this chapter, "minority business enterprise" means a business that is one (1) of the following:

(1) A sole proprietorship owned and controlled by a minority;

(2) A partnership or joint venture owned and controlled by minorities:

(A) in which at least fifty-one percent (51%) of the ownership interest is held by at least one (1) minority; and

(B) the management and daily business operations of which are controlled by at least one (1) of the minorities who own the business;

(3) A corporation or other entity:

(A) whose management and daily business operations are controlled by at least one (1) of the minorities who own the business; and

(B) that is at least fifty-one percent (51%) owned by at least one (1) minority; or if stock is issued, at least fifty-one percent (51%) of the stock is owned by at least one (1) minority;

has the meaning set forth in IC 4-13-16.5-1.

SECTION 11. IC 4-33-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. As used in this chapter, "women's business enterprise" means a business that is one (1) of the following:

(1) A sole proprietorship owned and controlled by a woman;

(2) A partnership or joint venture owned and controlled by women in which:

(A) at least fifty-one percent (51%) of the ownership is held by women; and

(B) the management and daily business operations of which are controlled by at least one (1) of the women who own the business;

(3) A corporation or other entity:

(A) whose management and daily business operations are controlled by at least one (1) of the women who own the business; and

(B) that is at least fifty-one percent (51%) owned by women; or if stock is issued, at least fifty-one percent (51%) of the stock is owned by at least one (1) of the women.

has the meaning set forth in IC 4-13-16.5-1.3.

SECTION 12. IC 4-33-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) As used in this section, "goods and services" does not include the following:

(1) Utilities and taxes.

(2) Financing costs, mortgages, loans, or other debt.

(3) Medical insurance.

(4) Fees and payments to a parent or an affiliated company of the person holding an owner's license, other than fees and payments for goods and services supplied by nonaffiliated persons through an affiliated company for the use or benefit of the person holding the owner's license.

(5) Rents paid for real property or payments constituting the price of an interest in real property as a result of a real estate transaction.

(b) Notwithstanding any law or rule to the contrary, **the commission shall establish annual goals for** a person issued an owner's license: ~~shall establish goals of expending at least:~~

~~(1) ten percent (10%) of the dollar value of the licensee's contracts for goods and services with minority business enterprises; and~~

~~(2) five percent (5%) of the dollar value of the licensee's contracts for goods and services with women's business enterprises.~~

(1) for the utilization of minority and women's business enterprises; and

(2) derived from a statistical analysis of utilization study of licensee contracts for goods and services that are required to be updated every five (5) years.

A person holding an owner's license shall submit annually to the commission a report that includes the total dollar value of contracts awarded for goods or services and the percentage awarded to minority and women's business enterprises.

(c) A person holding an owner's license shall make a good faith effort to meet the requirements of this section and shall annually demonstrate to the commission that an effort was made to meet the requirements.

(d) A person holding an owner's license may fulfill not more than seventy percent (70%) of an obligation under this chapter by requiring a vendor to set aside a part of a contract for minority or women's

- 1 business enterprises. Upon request, the licensee shall provide the
- 2 commission with proof of the amount of the set aside.
(Reference is to ESB 361 as printed April 6, 2001.)

Representative CRAWFORD